IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5557 of 2007()

[CRIME NO.81/07 OF ANCHUTHENGU POLICE STATION]
TRIVANDRUM DISTRICT.

PETITIONER/ACCUSED NO. 2 & 3

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1. SHIBU, S/O. BALAN,
AGED 30 YEARS, 654/1, THAYYIL HOUSE,
KAYIKKARA, ANCHU THENGU, KAYIKKARA P.O.
TRIVANDRUM DISTRICT.

2. SUNIL,S/O. HARIDAS, AGED 34 YEARS,
361/A, (3/10),KUNNUVILAKAM,
ANCHUTHENGU NORTH, KAYIKKARA P.O.

BY ADV. SRI.SURESH JOSE

RESPONDENTS: COMPALINANT

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5557 of 2007

Dated this the 17th day of September 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 2 and 3. Altogether there are three accused persons. They face allegations inter alia under Sections 326 and 308 read with 34 I.P.C. The alleged incident took place on 27/7/2007. The crime was promptly registered. The first accused had already been arrested. The petitioners - second and third accused have not been arrested so far. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They may be saved of the undeserved trauma of arrest, detention and custody. The petitioners are prepared to abide by any reasonable conditions imposed, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor stoutly opposes the application. The learned Public Prosecutor submits that dangerous weapons - swords have been used by the petitioners. Grievous injury has been suffered by the victim. There are no features in this case which can justify the invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners may be directed to surrender before the investigating officer or the learned Magistrate and then seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I take note of the alleged concerted attack. I take note of the nature of injuries suffered by the victim. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007